

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE THE ESTATE OF  
PLUTARCO BALLI, DECEASED.

EDUARDO BALLI,  
*Objector/Appellant,*

*v.*

SYLVIA BALLI-GARDNER,  
*Personal Representative/Appellee.*

No. 2 CA-CV 2019-0143  
Filed July 21, 2020

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

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Appeal from the Superior Court in Pima County  
No. PB20171622  
The Honorable Kenneth Lee, Judge

**AFFIRMED**

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COUNSEL

Peter G. Schmerl PLLC, Tucson  
By Peter G. Schmerl  
*Counsel for Objector/Appellant*

Law Office of Ethan Steele P.C., Tucson  
By Ethan Steele  
*Counsel for Personal Representative/Appellee*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

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ESPINOSA, Judge:

¶1 Eduardo Balli appeals from the trial court's order and judgment denying his objection to the inventory of Plutarco Balli's estate. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 Following Plutarco's death, Eduardo, one of his five children, filed a petition for formal probate of his estate. Eduardo's sister, Sylvia Balli-Gardner, objected to Eduardo's petition and filed a petition for formal probate and to be appointed as personal representative pursuant to Plutarco's will. After a trial on the issue of the appointment of a personal representative for the estate, Sylvia was appointed.

¶3 Eduardo subsequently objected to the inventory filed by Sylvia, contending it omitted three credit union accounts worth \$246,957.50 at Plutarco's date of death. The three accounts were jointly held by Plutarco and his two daughters, Sylvia and Selia. The account agreement states that "a joint account includes rights of survivorship," and "when one . . . owner dies, all sums in the account will pass to the surviving owner(s)." Sylvia asserted the accounts are "not an estate asset."

¶4 After a hearing, the trial court denied Eduardo's objection and found as a matter of law the joint accounts were not part of the probate estate but transferred to the joint owners, Sylvia and Selia. A final judgment was subsequently entered and this appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

**Discussion**

¶5 Eduardo maintains on appeal that the three accounts should be included in Plutarco's estate to effectuate Plutarco's intent, as demonstrated in the residual clause of his will. Citing only statutorily superseded caselaw and nonapplicable decisions from other jurisdictions, he asserts "mere existence of joint accounts is insufficient evidence if there is more to the story." In essence, he argues that his proffered evidence of

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Plutarco's intent should rebut any presumption that the bank accounts be distributed as joint accounts.

¶6 Under Arizona's previous statutory scheme, an heir could prove that remaining sums in a joint account upon an owner's death belonged to the owner's estate rather than the surviving parties by showing "evidence of a different intention" when the account was created. *Groth v. Martel*, 126 Ariz. 102, 102-03 (App. 1979) (quoting former A.R.S. § 14-6104). That statute, however, was repealed in 1994. 1994 Ariz. Sess. Laws, ch. 290, § 17. As Sylvia points out, under the current statutory scheme, joint accounts, or multiple-party accounts, are non-probate assets. A multiple-party account is "an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned." A.R.S. § 14-6201(5). "[S]ums on deposit in a multiple party account belong to the surviving party or parties." A.R.S. § 14-6212(A). Rights at death in multiple-party accounts "are determined by the type of account at the death of a party," A.R.S. § 14-6213(A), and "[a] right of survivorship arising from the express terms of the account . . . may not be altered by will," § 14-6213(B).

¶7 As noted above, the three accounts in question are, by their express terms, joint accounts with a right of survivorship. The evidence established that Plutarco intended to create a joint account with Sylvia and Selia as co-owners, and did so. Had he wished to change the ownership of his accounts and their disposition upon his death, he was required to do so with the financial institution. *See* § 14-6213(B). There is no evidence he took any such action. Accordingly, the trial court did not err in excluding the three accounts from the probate estate.<sup>1</sup>

**Disposition**

¶8 The trial court's order and judgment is affirmed.

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<sup>1</sup> Additionally, we find Eduardo's citations to out-of-jurisdiction authority unpersuasive, especially in view of the controlling Arizona law directly on point.